DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

TJR
Docket No: 5588-13
6 June 2014

[redacted]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 June 2014. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Naval Reserve and began a period of active duty on 28 February 1979. About five months later, on 30 July 1979, you received nonjudicial punishment (NJP) for a five day period of unauthorized absence (UA).

During the period from 3 October 1979 to 24 June 1980, you were in a UA status on three more occasions. Although the discharge documentation is not in your record, it appears that you requested discharge for the good of the service to avoid trial by court-martial for the foregoing periods of UA totalling 236 days. Regulations required that before making such a request, an individual must be advised by military counsel concerning the consequences of such a request. Since the record shows that you were discharged by reason of good of the service to avoid trial on 14 August 1980, the Board presumed that the foregoing occurred in your case. Because you requested discharge in lieu of trial, you avoided the possibility of a punitive discharge and confinement at hard labor.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your desire to upgrade your discharge and assertion of being lied to by a recruiter. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of your repeated and lengthy periods of UA which presumably resulted in your request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. The Board further concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted and should not be permitted to change it now. Finally, there is no evidence in the record, and you submitted none, to support your assertion. Accordingly, your application has been denied.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

ROBERT D. ZSALMAN
Acting Executive Director